Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Fibertech Networks, LLC.	)	RM-11303
	)	
Petition for Rulemaking	)	
	)	

COMMENTS OF AT&T INC.[1]

Pursuant to Section 1.405 of the Commission's rules (47 C.F.R. § 1.405) and the Commission's Public Notice released December 14, 2005 (DA 05-3182),[2] AT&T Inc. ("AT&T") submits these comments on the above-captioned petition filed December 7, 2005 by Fibertech Networks, LLC ("Fibertech") requesting the Commission to initiate a rulemaking to adopt a set of "best practices" governing competitors' access to poles and conduits of incumbent local exchange carriers ("ILECs") and other utility owners of such facilities.[3]

Fibertech notes that pursuant to Section 224(f)(1) of the Communications Act (47 U.S.C. § 224(f) (1)) and related statutes and Commission orders, ILECs and other utilities are obligated to provide other telecommunications carriers "with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled" by those

[1] On November 18, 2005, SBC Communications Inc. closed on its merger with AT&T Corp. The resulting company is now known as AT&T Inc. In these comments, "AT&T" refers to the merged company and its wholly-owned subsidiaries, including its ILEC operating subsidiaries, unless otherwise noted.

[2] The Commission subsequently granted a request for an extension of the deadlines for filing comments and reply comments originally prescribed in the Public Notice. *See Fibertech Networks, LLC (Petition for Rulemaking*), RM-11303, Order (Competitive Pricing Division, rel. Jan. 10, 2006).

[3] Petition for Rulemaking of Fibertech Networks, LLC, RM-11303, filed December 7, 2005 ("Pet.").

entities.[4] Pet, pp. 2-3. The petition asserts (*id*.) that utilities "have adopted a variety of practices" that contravene these obligations and that due to those practices competitors' access to poles and conduit is being "unreasonably delayed or subject[ed] to unwarranted costs." To address the issues described in its petition, Fibertech requests the Commission to adopt the following "standard practices" for pole and conduit access:

. 1. Allow use of boxing and extension arms where:

   a. such techniques would render unnecessary a pole replacement or rearrangement of electric facilities;

   b. facilities on the pole are accessible by ladder or bucket truck; and

   c. the pole owner has previously allowed such techniques.

2. Establish shorter survey and make-ready time periods;

3. Allow competitors to hire utility-approved contractors to perform field surveys and make-ready work;

4. Permit installation of drop lines to satisfy customer service orders without prior licensing;

5. Allow competitors to search utility records and survey manholes to determine availability of conduit, and limit charges if the utility performs these functions;

6. Allow utility-approved contractors to work in manholes without utility supervision; and

7. Require incumbent local exchange carriers (ILECs) to share building-entry conduit with competitive local exchange carriers ("CLECs").

[4] *See also* 47 U.S.C. § 224(b) (the 1978 Pole Attachment Act, conferring authority on the Commission to regulate rates, terms and conditions of pole attachments to assure they are just and reasonable); 47 U.S.C. § 251(b)(4)(requiring ILECs to provide access to poles, ducts, conduits and rights-of-way by competing telecommunications service providers "on rates, terms and conditions that are consistent with section 224*"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996).

Under Fibertech's proposal, failure by a utility to adhere to these practices would be deemed *per se* unjust and unreasonable under the Communications Act. Pet., p. 1 and Appendix A.

Adoption by the Commission of highly prescriptive measures such as those Fibertech proposes here is inappropriate in the absence of probative record evidence demonstrating that the conduct alleged in the petition is widespread, rather than merely reflective of particular entities' conduct in certain local markets, and that less intrusive regulatory or commercial measures have already proven insufficient to address those problems. The petition falls well short of demonstrating either of these prerequisites.

Notwithstanding these deficiencies in the petition, however, AT&T does not dispute Fibertech's underlying premise that nondiscriminatory access to pole and conduit is necessary for the preservation of a robustly competitive telecommunications marketplace. Pet., p. 2. AT&T therefore does not oppose the Commission's initiating a rulemaking to compile evidence regarding (i) the extent of the conduct Fibertech describes and (ii) the need for any further regulatory standards to correct whatever problems may be shown by that record. However, given the current state of the record, the Commission should refrain from including in such a rulemaking any tentative conclusions regarding specific regulations such as those Fibertech proposes.

As a threshold matter, Fibertech does not provide sufficient evidence of the extent to which the practices described in its petitions represent conduct that is, or is likely to become, widespread on the part of owners of poles and/or conduit facilities. Rather, the petition merely cites a limited number of "examples" of conduct that

Fibertech states it or other CLECs have encountered.[5] Without further development of the record, the Commission cannot evaluate whether any of the conduct that the petition describes is limited in geographic scope or is confined either to a single carrier or to a limited segment of the utility and/or telecommunications industries. Such information is obviously a necessary predicate for the Commission's determination both of the need for any additional regulatory measures, as well as for crafting any specific regulations that the record may disclose are required.

Moreover, as even Fibertech is constrained to admit (Pet., p. 4) to the extent that the problems it describes may arise, they are in many cases already being addressed by state regulatory authorities. In all, 19 public service commissions have asserted regulatory authority over pole attachments and related facilities.[6] Indeed,

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[5] *See* Pet., p. 15 (stating that pole attachment agreements "like Verizon's in New England" allow lengthy delays in completing make-ready work); *id.*, pp. 24-25 (stating that Verizon incorrectly reported on conduit availability "on at least 14 occasions" in one specific deployment by Fibertech, but admitting that Fibertech "cannot know" whether or on how many other occasions Verizon made similar erroneous reports); *id*., p. 25 (stating that "Verizon, for example," has given "unpersuasive" reasons for denying Fibertech access to conduit records) *id.*, p. 26 ("Verizon . . . for example . . . charges fees that it cannot justify," citing one record search and survey for which an estimate was rendered); *id*., p. 27 (describing discrepancy between Verizon estimate and actual costs of record search and survey "in the example above"); *id*., pp 27-28 (describing discrepancy between Verizon estimates and higher actual costs in former NYNEX territory); *id.*, p. 31 ("example" of delay caused by Verizon requirement for supervision of Fibertech installation personnel); *id.*, p. 32 ("example" of Verizon hourly charges for inspector that exceeded Fibertech's hourly costs of entire splicing crew).

[6] The states that exercise regulatory aegis over these matters are :

Alaska	Massachusetts
California	Michigan
Connecticut	New Jersey
Delaware	New York
District of Columbia	Ohio
Idaho	Oregon
Illinois	Utah
Kentucky	Vermont
Louisiana	Washington
Maine	

(footnote continued on following page)

Fibertech's petition repeatedly lauds the manner in which state commissions have exercised their oversight over pole attachment and conduit access practices.[7] The Commission should take existing state regulatory mechanisms into account in determining the extent, if any, to which new federal rules are needed.

Negotiations, rather than prescriptive regulatory directives, should be the preferred avenue for parties to utilize in reaching cost-effective agreements that minimize the time intervals necessary to begin providing service to end-user customers, while ensuring that issues affecting worker safety and network integrity are properly reflected. AT&T's experience confirms that negotiated arrangements between owners of poles and conduits and other prospective users of those facilities generally can be successful, at least where the pole owner is subject to Commission oversight.[8] In fact, at least for the areas served by AT&T, such negotiations (and, where necessary, arbitrations before state

(Footnote continued from preceding page)

See Public Notice, DA-92-201 (rel. February 21, 1992).

[7] *See* Pet., p. 14 (discussing Connection Department of Public Utility Control regulation of pole attachment practices) *id.*, pp. 14-15, 17, 19, 28 (discussing New York Public Service Commission decision in *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachments, Case 03-M-0432 (issued and effective August 6, 2004) id., p. 20 (describing Illinois Commerce Commission arbitration ruling on make-ready work in *AT&T Communications of Illinois et al., Verified Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Co. (SBC Illinois) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Decision, ICC Docket 03-0239 (issued August 26, 2003).

[8] The Commission's analysis of Fibertech's requests for relief must take into account the significant disparities in regulatory authority over different classes of pole and conduit owners. Notably, unlike telecommunications carriers, electric utilities are *not* subject to the arbitration provisions of the Telecommunications Act of 1996. Similarly, building owners, and not regulated utilities, exercise control over the portions of conduit running from their property line to their premises. See fn. 11, *infra*.

commissions) have already resolved several of the issues that Fibertech seeks to have addressed through its petition.

In any rulemaking conducted in response to the petition, the Commission also should evaluate whether existing provisions for negotiated arrangements between owners and users of poles and conduits already satisfactorily address the concerns expressed by Fibertech. For example, while Fibertech asks that CLECs be permitted to use their own personnel to conduct searches in conduit owners' records to determine the availability of conduit space, Pet., pp. 24-25, the Interconnection Agreements ("ICAs") for all of AT&T's ILEC affiliates already allow CLEC personnel to conduct such records searches, subject to the reasonable justified condition that AT&T personnel first redact such records to protect the identity of other users of the conduit space. Similarly, Fibertech requests that CLECs be permitted to use utility-approved contractors to work in manholes to install fiber in conduit and perform other tasks without continuous supervision by ILEC personnel. Pet., p. 31. Once again, pursuant to their ICAs, all AT&T ILEC affiliates already permit CLECs to make such use of AT&T-approved contractors, subject to oversight by an AT&T representative which is generally conducted through periodic site visits, rather than through continuous on-site presence of an AT&T employee.

In the event, the record developed in the rulemaking indicates that any of the issues Fibertech raises are not fully addressed by existing rules or current bilateral arrangements, the Commission should first consider how to strengthen incentives to promote negotiated solutions, rather than reflexively resorting to additional regulatorily imposed solutions. In that regard, the Commission should keep clearly in mind that the petition addresses highly complex issues affecting technical and operational needs of pole

and conduit owners and prospective competitive users of those facilities. Bilateral negotiations are the best way to ensure that any problems are addressed through solutions that are technically feasible and consistent with public safety concerns.

Finally, the Commission should be mindful that, contrary to the implication in Fibertech's petition, utility practices do not uniformly operate to advantage pole and conduit owners and disadvantage CLECs. For example, while Fibertech requests (Pet., pp. 13-16) that the Commission require pole owners to allow CLEC use of boxing and extension arms in specified circumstances, AT&T's ILEC operations as a general rule do not support boxing or extension arms for space gain for their own use.[9] There is no justification for conferring an extra-statutory, preferred status on CLECs to engage in these pole attachment practices.

Moreover, as the petition itself acknowledges (at p. 2 n. 2), utilities' nondiscrimination obligations nevertheless allow them to limit access to poles and conduit where there is insufficient capacity to accommodate other prospective users or "for reasons of safety, reliability, and generally applicable engineering purposes." 47 U.S.C. § 224(f)(2).[10] As one example, Fibertech requests the Commission to require ILECs to share building-entry conduit with CLECs. (Pet., 35-36) Such sharing raises important service-affecting concerns. Improper – and, indeed, even proper – rodding of

[9] AT&T's ILEC operations may, however, make limited use of these techniques for purposes other than space gain (e.g., for load balancing).

[10] Many other factors may also affect a facility owner's ability to provide CLECs access to poles or conduit. For example, in Illinois and Ohio AT&T's collective bargaining agreements with certain of its unions limit the categories of personnel that can perform certain work functions in the make-ready process, and this limitation may, in some instances, affect the time within which AT&T is able to satisfy CLEC requests to lay fiber.

occupied ducts may cause damage to existing cable facilities, either through immediate or future sheath degradation.[11] The Commission must carefully balance the interests of utility conduit owners, prospective CLEC users of such conduit, and potentially affected customers in addressing this and other portions of Fibertech's petition.

CONCLUSION

For the reasons stated above, AT&T does not oppose the Commission initiating a rulemaking to compile evidence regarding the extent and marketplace impact of the conduct Fibertech describes in its petition. However, the Commission should refrain from including in such a rulemaking any tentative conclusions regarding specific proposed regulations such as those Fibertech suggests.

Respectfully submitted,

/s/ Peter H. Jacoby

Peter H. Jacoby
Gary L. Phillips
Paul K. Mancini

AT&T INC.

1401 I Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 326-8800

Its Attorneys

January 30, 2006

[11] Additionally, this aspect of Fibertech's requested relief implicates conduct by entities that are not subject to the control of utilities (nor apparently subject to the Commission's regulatory authority). Conduit from the building line to the remainder of the premises is the property of building owners, who may impose restrictions on the use of those facilities even apart from any operational requirements of the utilities who use that conduit.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January 2006, copies of the foregoing "Comments of AT&T Inc." were served by U.S. first class mail, postage prepaid, on the parties listed below:

Marlene Dortch*
Office of the Secretary
Federal Communications Commission
445 12th Street, SW Suite TW-A325
Washington, DC 20554

Best Copy & Printing, Inc.**
Portals II – Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com

Charles Stockdale
Robert T. Witthauer
Fibertech Networks, LLC
140 Allens Creek Road
Rochester, NY 14618

John T. Nakahata
Brita D. Standberg
Stepanie Weiner
Harris, Wiltshire & Grannis, LLP
1200 Eighteenth Street, NW
Washington, DC 20046

/s/ Karen Kotula
Karen Kotula

*via electronic filing
** via email